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December 12, 2002

Via First Class Mail

BOX TTAB - FEE
Commissioner Trademarks
2009 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

We are enclosing herewith the following documents set forth below, which are to be filed in the Patent and Trademark Office.

Please charge all government filing fees with respect to the enclosed documents to our Miscellaneous Account No. 02-0755.

Very truly yours,

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

Roberta Jacobs-Meadway
ROBERTA JACOBS-MEADWAY

Enclosures: Notice of Opposition

Sexy Hair Concepts, LLC v Australian Gold, Inc.

Serial No.: 76/403,550 for "SEXY THING"

Fee: \$300.00

Attorney Docket No. 080492

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: BOX TTAB FEE, COMMISSIONER FOR TRADEMARKS, 2000 CRYSTAL DRIVE, ARLINGTON, VA 22202-3513 ON THE DATE INDICATED BELOW

By: *Edie Ritchie*

DATE: *12/13/02*

RJM:DLD:cda

PHL_A #1700613 v1

SHC 2927

OPP NO.
125,739
(50 SEXY)

EXHIBIT 14-1	
Deponent	<i>M. Stiller</i>
Date	<i>9.28.04</i>
Rptr.	<i>mg</i>
DEPOBOOK	

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on the date indicated below.

By: Edie Ketchum
Date: 12/13/02

BOX TTAB FEE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Sexy Hair Concepts, LLC

Opposer,

v.

Opposition No. _____

Australian Gold, Inc.

Applicant.

NOTICE OF OPPOSITION

Honorable Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Dear Sir/Madam:

In the matter of Trademark Application Serial No. 76/403,550 for the mark
"SEXY THING", filed May 3, 2002 and published for opposition in the Official Gazette on
November 26, 2002.

Sexy Hair Concepts, LLC a California corporation having a place of business at
9232 Eton Avenue, Chatsworth, California 91311 ("Opposer"), believes that it will be damaged
by the registration of the mark shown in the above-identified application and hereby opposes the
same. The grounds for opposition are as follows:

1. Australian Gold, Inc., an Indiana corporation ("Applicant"), seeks to register "SEXY THING" as a trademark for use in connection with sun tanning preparations as evidenced by the publication of said mark in the Official Gazette on November 26, 2002.

2. The application herein opposed was filed May 3, 2002 on the basis of "intent to use". Applicant claims no date earlier than May 3, 2002 for the purpose of claiming priority.

3. Opposer has, itself and through its predecessor and related companies in interest, ("Opposer") been engaged in the development, manufacture and sale of hair and skin care preparations for men, women and children and has built a successful business in connection therewith.

4. Opposer has since at least as early as June 15, 1998 used the mark "SEXY HAIR" for hair care preparations for men, women and children. Opposer has since at least as early as December 21, 1998 used such mark in commerce for such goods.

5. Use of the "SEXY HAIR" mark by Opposer has been continuous and commercially significant. Promotional material showing Opposer's use of "SEXY HAIR" is attached as Exhibit A.

6. Opposer has taken steps to protect the "SEXY HAIR" mark and has secured U.S. Trademark Registration No. 2,403,396 for such mark for the hair care preparations for men, women and children identified therein. Registration No. 2,403,396 is valid and subsisting and the copy of the pertinent information about such registration from the PTO database is attached as Exhibit B.

7. Opposer has since 1998 taken steps to develop a family of "SEXY" marks including: "SEXY HAIR CONCEPTS"; "WILD SEXY HAIR"; "BIG SEXY HAIR"; "SHORT

SEXY HAIR"; "CURLY SEXY HAIR"; "STRAIT SEXY HAIR; and "HEALTHY SEXY HAIR". Promotional material showing the "SEXY" marks of Opposer is attached as Exhibit C.

8. As part of Opposer's family of "SEXY" marks, opposer has developed and sold skin care products under the "SEXY BATH & BODY" mark. Opposer owns by assignment application serial no. 78/021,257, filed August 15, 2000, for the mark "SEXY BATH & BODY" for skin care products. Opposer has made use of the mark and filed a Statement of Use directed to the mark on November 20, 2002. A label showing such use of the mark is attached as Exhibit D.

9. Opposer has under the "SEX SYMBOL" trademark developed and sold tanning preparations. Opposer has since at least as early as January 1, 2001 used the mark "SEX SYMBOL" for hair and skin care preparations for men, women and children, including tanning preparations. Opposer has since at least as early as January 1, 2001 used the mark in commerce for such goods. Promotional materials showing such use are attached as Exhibit E.

10. Opposer has taken steps to protect the "SEX SYMBOL" mark and has secured U.S. Trademark Registration No. 2,636,664 for such mark. Registration No. 2,636,664 is valid and subsisting and the copy of the pertinent information about such registration from the PTO database is attached as Exhibit F.

11. Opposer has since prior to August 15, 2000 used "Sexy Hair" and "Sexy Hair Concepts" as trade names as well as a marks in connection with its business of developing and marketing hair care and skin care preparations, including tanning preparations.

12. Opposer's registered trademarks "SEXY HAIR" and "SEX SYMBOL", and Opposer's family of "SEXY" marks, and the "Sexy Hair" and "Sexy Hair Concepts" names

are inherently distinctive as applied to Opposer's skin care and hair care preparations and business.

13. By virtue of Opposer's continuous use in commerce of its registered "SEXY HAIR" and "SEX SYMBOL" trademarks and its family of "SEXY" marks and the "Sexy Hair" and "Sexy Hair Concepts" names in connection with such goods and business, such goods and business have become favorably known to the relevant trade and public under such marks and name.

14. Opposer is the owner of U.S. trademark registrations for both "SEXY HAIR" and "SEX SYMBOL"; accordingly, priority is not in issue.

15. In the application herein opposed, there are no restrictions on trade channels, so it must be assumed that the goods identified in the application will travel through all trade channels appropriate for goods of such type.

16. Applicant's mark as intended to be used in connection with the goods identified in the application herein opposed is confusingly similar to Opposer's registered "SEXY HAIR" and "SEX SYMBOL" trademarks and also to the family of "SEXY" marks established by Opposer, and to Opposer's "Sexy Hair" and "Sexy Hair Concepts" trade names as used in connection with Opposer's goods and business.

17. Each of the marks has as its dominant element the identical term, "SEXY", followed by a descriptive or generic designation.

18. The goods of Opposer and the goods of applicant are, in part, identical and are otherwise closely related, being hair care and skin care preparations, including tanning preparations.

19. Hair care preparations, skin care preparations and other personal health and beauty products such as are sold by Opposer and are identified in the application herein opposed are customarily sold and marketed through the same and overlapping channels of trade.

20. It is common and therefore expected for companies to use the same mark for hair care preparations and skin care preparations as part of a line of related health and beauty products, all distributed under a common mark. The following third party registrations demonstrate the related nature of hair care and skin care preparations and other health and beauty products:

Mark	Registration No.	Goods
HYDRA-DETENTE	2,659,435	Non-medicated skin care and cleaning preparations...sun products, namely, sun screen, suntanning oils and lotions, sun block, after-sun cream, self-tanning milk and cream, accelerated tanning cream; cosmetics...hair care preparations, namely, shampoo, conditioners, sprays, lotions, hair gels, mousse, masks, foams, sunscreen and hair color
I.D. INDIVIDUAL DEMANDS	2,510,582	Hair Products, namely, shampoos, conditioners, hairspray, reconstructor and Styling Preparations, styling pomade ...For Men's Preparatory Products, namely shaving cream, shaving lotion, after shave lotion...suntanning creams
BODY INVEST	2,651,844	Shampoo, conditioner, hair spray, gel and mousse, body and face moisturizers and lotions, body oils, soap, shaving cream and gel, and suntanning preparations
COSMETOTALE	2,641,616	Non-medicated suntanning preparations, namely, sun creams, sun tan gel, sun tan lotion, sun tan oil...hair shampoo, hair car preparations
JOHNSON'S ULTRA SENSITIVE and Design	2,155,403	Cosmetics and toiletries, namely, hair shampoo, skin lotion, skin cleansers, skin cream, body soap

TCB (Stylized)	1,256,544	Hair shampoo, hair conditioner, hair lotion, skin lotion, hair relaxer, hair spray
GLY SILK	2,038,351	Skin and hair care products, namely, hair shampoo, facial cleanser, body wash, hand cream, body lotion, face toner, facial peels, foot cream, sunblock, face creams, and moisturizers
PALMER'S (Stylized)	1,610,344	<i>Inter alia</i> , cocoa butter, suntan oil cream, moisturizing lotion and cream, hair shampoo and conditioners, hair color, hair holding spray, hair moisturizers
PAUL MITCHELL THE CONDITIONER and Design	1,750,932	Non-medicated hair and skin care conditioner for detangling hair, moisturizing hair, treating scalp and skin, thermal control during waving and drying, shaving lotion, skin massage and skin protein additive
NEXXUS (Stylized)	1,376,635	<i>Inter alia</i> , hair shampoo, hair conditioners, hair sprays, skin cleaning preparations, and skin conditioners
REDKEN	0,971,521	Hair conditioners, wave sets, hair sprays, permanent wave lotions, hair lighteners, hand lotions, and face and skin creams; hair shampoos and women's beauty soap

Copies of printouts from the PTO database showing the pertinent information about these registrations are attached hereto as Exhibit G.

21. The preparations marketed and sold under Opposer's registered "SEXY HAIR" and "SEX SYMBOL" trademarks and Opposer's family of "SEXY" marks, and through Opposer's "Sexy Hair Concepts" business, and the preparations intended to be sold under Applicant's "SEXY THING" mark, are such as would be sold to the same and to overlapping classes of purchasers, namely men, women and children, generally; and through the same and overlapping channels of trade.

22. Tanning products such as those identified in the application herein opposed are typically advertised in the same trade publications as hair care products and other skin care products.

23. Applicant's "SEXY THING" trademark as applied to the goods set forth in the application herein opposed so resembles Opposer's registered "SEXY HAIR" and "SEX SYMBOL" trademarks, and also Opposer's family of "SEXY" marks as applied to Opposer's products and Opposer's "Sexy Hair Concepts" name as used in connection with Opposer's business, that it is likely to cause confusion, mistake, and/or deception.

24. If Applicant is permitted to register "SEXY THING" for the goods set forth in the application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer.

25. Any defect, objection to or fault found with Applicant's goods sold under its mark "SEXY THING" would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods and business.

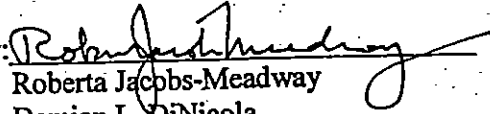
26. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer and Opposer's customers.

WHEREFORE, Sexy Hair Concepts, LLC prays that registration of the mark of Application Serial No. 76/403,550 be refused and that this opposition be sustained.

A duplicate copy of this Notice of Opposition is enclosed herewith.

The required fee of \$300 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

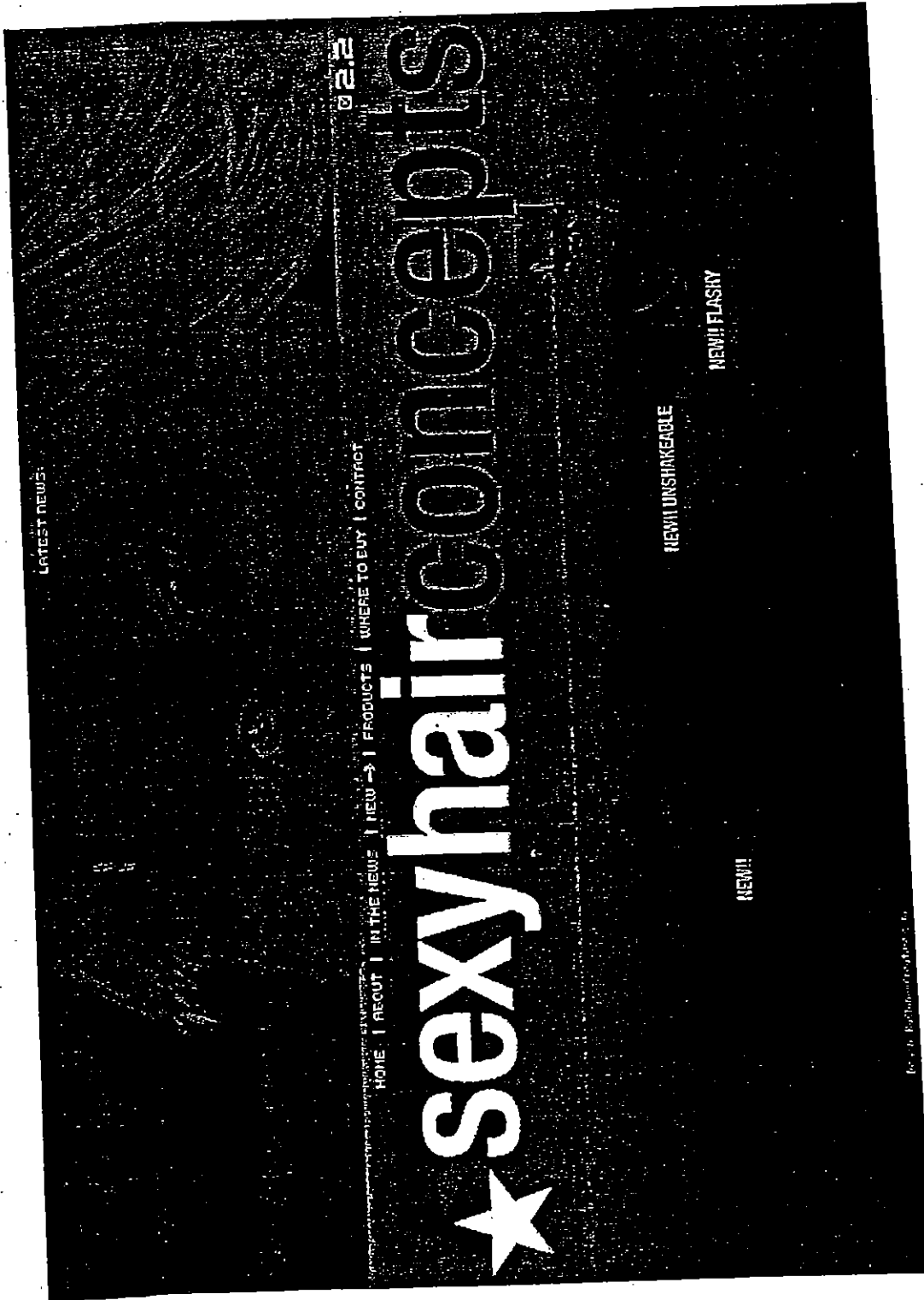
Respectfully submitted,

By: 
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Dated: 12/12/02

ATTORNEYS FOR OPPOSER

EXHIBIT A



SHC 2937

10/11/2002

http://www.sexyhairconcepts.com/index_intro1.html

14-11

SEXSYMBOL

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★ sexyhair

Go ahead, touch it.



sex symbol:
aero tan
INSTANT TEMPORARY
TANNING SPRAY

Instant temporary tanning spray
Unique aerosol tanning formula
an overall even tan that does n
skin looking orange. Spray on
rub in. Can be used to maintain
bronzed look.

Aero Tan does not contain sun-
and does not protect from UV

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SHC 2938

10/11/2002

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SEXSymbol

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Go ahead, touch it.



Super
Natural
Love
♡

sex symbol :

The Super Natural Love Collect Sex Symbol unites pure beauty the true essence of being in love.

Intensify genuine beauty and existing makeup with Sex Sym Super Natural Love. This color returns to pure sensuality and love that comes from life's firsts — love and desire.

Sex Symbol's Super Natural Love allows anyone to easily go from ordinary to extraordinary!

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SHC 2939